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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MIKE SARIEDDINE, an individual,

17 Plaintiff,

18 v.

19 D&A Distribution, LLC (dba Strictly E-
20 Cig), a Georgia limited liability
21 company et al.,

22 Defendants.

23 Shenzhen Technology Co., Ltd. (f/k/a
24 Shenzhen Smok Technology Co., Ltd.),
25 a Chinese corporation et al.,

26 Counterclaimants,

27 v.

28 MIKE SARIEDDINE, an individual,
Counter-Defendant.

Case No. 2:17-cv-02390-DSF-SK

**[PROPOSED] ORDER TO
STIPULATED PROTECTIVE
ORDER**

Having considered the parties' pleadings on file to date, and the parties' jointly submitted Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery, or filed with the Court in this action, the Court determines as follows:

1 **1. INTRODUCTION:**

2 1.1 PURPOSES AND LIMITATIONS. Discovery in this action is likely to
3 involve production of confidential, proprietary, or private information for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the Court to file material under seal.

15 1.2 GOOD CAUSE STATEMENT. This is an action for trademark
16 infringement, unfair competition, and breach of contract. The information disclosed
17 in discovery may be sensitive and may include, without limitation, revenue, profits,
18 costs, trade secrets, marketing, and sales forecasts. Accordingly, the parties believe
19 that the designation of certain materials as Confidential Information or Attorneys'
20 Eyes-Only Information is necessary because there is significant risk in disclosing
21 certain highly sensitive information beyond the purposes of this litigation. Any of the
22 parties could be irreparably harmed if designated Confidential Information and
23 Attorneys' Eyes-Only Information is divulged or somehow wrongly misused by the
24 Parties or non-parties. The unfettered disclosure of the information, including but not
25 limited to the filing of the documents in the public record, could be harmful to the
26 commercial interests of the Parties. There is good cause to enter this Protective Order
27 to ensure adequate protection against the wrongful use or disclosure of protected
28 material, and to protect the value associated with the protected material. Any
 violation of the confidentiality obligations set forth in this Protective Order could be

1 detrimental and prejudicial to one or more Parties. The Parties agree that the concerns
2 set forth in this paragraph are asserted in good faith.

3 **2. DEFINITIONS**

4 2.1 Action: Sarieddine v. D&A Distribution, LLC, et al., Case No. 2:17-cv-
5 989-DSF-MRW

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 “ATTORNEYS’ EYES ONLY” Information or Items: a subset of
13 Confidential Information that a party in good faith believes is entitled to heightened
14 protection in order to protect economic, competitive, or sensitive personal
15 information.

16 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
17 support staff).

18 2.6 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

21 2.7 Disclosure or Discovery Material: all items or information, regardless of
22 the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced
24 or generated in disclosures or responses to discovery in this matter.

25 2.8 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as
27 an expert witness or as a consultant in this Action.

1 2.9 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.10 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a party
7 to this Action but are retained to represent or advise a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm
9 which has appeared on behalf of that party, and includes support staff.

10 2.12 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.14 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.15 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

21 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (1) any information copied or
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or
28 presentations by Parties or their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial will be governed by the orders of the
2 trial judge. This Order does not govern the use of Protected Material at trial.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order will remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition will be
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
8 with or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
10 including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.
14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under this Order. The Designating Party must designate for protection only
17 those parts of material, documents, items, or oral or written communications that
18 qualify so that other portions of the material, documents, items, or communications
19 for which protection is not warranted are not swept unjustifiably within the ambit of
20 this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to have been made for an improper purpose (e.g., to unnecessarily
23 encumber the case development process or to impose unnecessary expenses and
24 burdens on other parties) may expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order should be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents,
8 but excluding transcripts of depositions or other pretrial or trial proceedings), that
9 the Producing Party affix at a minimum, the legend “CONFIDENTIAL”
10 (hereinafter “CONFIDENTIAL legend”) “ATTORNEYS’ EYES ONLY”
11 (hereinafter “AEO legend”), to each page that contains protected material.

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and
15 before the designation, all of the material made available for inspection will be
16 deemed “ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
17 the documents it wants copied and produced, the Producing Party must determine
18 which documents, or portions thereof, qualify for protection under this Order. Then,
19 before producing the specified documents, the Producing Party must affix EITHER
20 the “CONFIDENTIAL legend” or the “AEO legend” to each page that contains
21 Protected Material.

22 (b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, before the close of the deposition
24 all protected testimony or within ten (10) days of receipt of the transcript.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information is stored the legend
28 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

1 5.3 Inadvertent Failures to Designate. If corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the
3 Designating Party's right to secure protection under this Order for such material.
4 Upon correction of a designation, the Receiving Party must make reasonable efforts
5 to assure that the material is treated in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time that is consistent with the Court's
9 Scheduling Order.

10 6.2 Meet and Confer. The Challenging Party will initiate the dispute
11 resolution process (and, if necessary, file a discovery motion) under Local Rule
12 37.1 et seq.

13 6.3 The burden of persuasion in any such challenge proceeding will be on the
14 Designating Party. Frivolous challenges made for an improper purpose (*e.g.*, to
15 harass or impose unnecessary expenses and burdens on other parties) may expose
16 the Challenging Party to sanctions. Unless the Designating Party has waived or
17 withdrawn the confidentiality designation, all parties will continue to afford the
18 material in question the level of protection to which it is entitled under the
19 Producing Party's designation until the Court rules on the challenge.

20 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a Non-Party in connection with this
23 Action only for prosecuting, defending, or attempting to settle this Action. Such
24 Protected Material may be disclosed only to the categories of persons and under the
25 conditions described in this Order. When the Action has been terminated, a
26 Receiving Party must comply with the provisions of section 13 below (FINAL
27 DISPOSITION). Protected Material must be stored and maintained by a Receiving

Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items.

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material ma

1 be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this Stipulated Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel, mutually
4 agreed upon by any of the parties engaged in settlement discussions.

5 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

6 Unless otherwise ordered by the Court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information or item
8 designated as “ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
11 disclose the information for this Action;

12 (b) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgement and Agreement to be Bound” (Exhibit A);

15 (c) the Court and its personnel; and

16 (d) court reporters and their staff.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification will
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena
26 or order is subject to this Protective Order. Such notification will include a copy of
27 this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order will not produce any information designated in this action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party will bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party will:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party will not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party will bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify the

1 procedure established in the Joint Report (Dkt. 145) that provides for production
2 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
3 insofar as the parties have reached an agreement on the effect of disclosure of a
4 communication or information covered by the attorney-client privilege or work
5 product protection, the parties hereby incorporate their agreement in this Stipulated
6 Protective Order.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material
17 may only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue.

19 **13. FINAL DISPOSITION**

20 After the final disposition of this Action, as defined in paragraph 4, within 60
21 days of a written request by the Designating Party, each Receiving Party must
22 return all Protected Material to the Producing Party or destroy such material. As
23 used in this subdivision, “all Protected Material” includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the
25 Protected Material. Whether the Protected Material is returned or destroyed, the
26 Receiving Party must submit a written certification to the Producing Party (and, if
27 not the same person or entity, to the Designating Party) by the 60 day deadline that
28 (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and (2) affirms that the Receiving Party has not retained any
2 copies, abstracts, compilations, summaries or any other format reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
4 are entitled to retain an archival copy of all pleadings, motion papers, trial,
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
6 and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective
9 Order as set forth in Section 4 (DURATION).

10 14. Any willful violation of this Order may be punished by civil or criminal
11 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
12 authorities, or other appropriate action at the discretion of the Court.

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14 **IT IS SO ORDERED.**

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16 DATED: November 13, 2017

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19 HON. STEVE KIM
20 United States Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of Sarieddine v. D&A Distribution, LLC, et al., Case No. 2:17-cv-989-DSF-MRW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I, Valerie McConnell, hereby certify that on November 9, 2017, I electronically filed the following document with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system: [PROPOSED] ORDER TO STIPULATED PROTECTIVE ORDER.

The document was electronically served by on all parties represented by counsel through the CM/ECF system.

Executed on November 9, 2017, at Los Angeles, California.

/s/ Valerie McConnell
Valerie McConnell